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Cc:

Subject: U.S.-Belgian Treaty Question

asked me to look into your question. First, are you sure the social security payments will be exempt from tax if the TPs make this election? It looks like only paragraph 7 of Article 17 is an exception to the saving clause under paragraph 5 of Article 1. Paragraph 2 of Article 17 applies solely to payments from the United States to a Belgian resident, and payments from Belgium to a U.S. resident or Belgian resident who is also a U.S. citizen.

If the social security income in question is exempt from U.S. income tax, Treas. Reg. sec. 301.6114-1(c)(1)(iii) provides that taxpayers taking the position that a U.S. treaty reduces or modifies the taxation of income derived from public or private pensions or social security are not required to disclose this position on their income tax return for the year in which the distributions are made. Accordingly, your TPs would not need to attach a Form 8833 to their return, or otherwise report the Belgian social security they received as income on Form 1040.